

**Newton Planning Board
June 20, 2012
7:00 PM**

The regular meeting of the Newton Planning Board took place on the above date. Chairman Le Frois read the Open Public Meetings Act and requested Mrs. Citterbart to call the roll. Board Secretary Mrs. Citterbart stated there was a quorum.

FLAG SALUTE

MEMBERS PRESENT: Mr. Flynn, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Russo, Mr. Caffrey, Mr. Torre, Mrs. Mattingly and Chairman Le Frois

ABSENT: Mr. Hardmeyer

PROFESSIONALS PRESENT: David Soloway, Esq., Board Attorney, of Vogel, Chait, Collins & Schneider, David Simmons, Board Engineer, of Harold Pellow & Associates, Jessica Caldwell, Town Planner of J. Caldwell & Associates, LLC.

BOARD SECRETARY: Kathy Citterbart

CONSIDERATION OF MINUTES

May 16, 2012, Regular Meeting, amended minutes.

Mrs. Le Frois made a motion to approve the amended May 16, 2012 minutes. Mr. Marion seconded the motion.

AYE: Mr. Flynn, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Russo, Mr. Caffrey, Chairman Le Frois

HISTORIC RESOLUTIONS:

None

RESOLUTIONS

None

OLD BUSINESS

Mariorana Enterprises, LLC (#PBPV-04-2012)

Block 22.05 Lot 13

104 Sparta Avenue

(Formerly Block 1201 Lots 5 & 5.03)

100-110 Sparta Avenue

Resolution is to grant a use variance that would allow 54 townhouses and six (6) low and moderate income apartments, conversion of the building, demolition of part of the other building plus a density variance, subject to site plan and subdivision approval.

Mr. Russo made a motion to approve the resolution with the correction. Mr. Marion seconded the motion.

AYE: Mr. Flaherty, Mr. Tharp, Mr. Russo, Mr. Caffrey, Mr. Torre, Mrs. Mattingly, Chairman Le Frois

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**Wells Fargo (#PSPA-06-2012)
Block 3.04, Lot 19
122 Water Street**

Resolution granting amended site plan approval and design standard waiver for lighting.

Mrs. Le Frois made a motion to approve the resolution. Mr. Russo seconded the motion.

AYE: Mr. Flynn, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Russo, Mr. Caffrey,
Chairman Le Frois

Sussex County Renewable Energy Program

Resolution reviewing a Capital Improvement Plan at four locations:

- A. Department of Public Works
Block 10.01, Lot 14
111 Moran Street
- B. Newton Wastewater Treatment Plant
Block 9.03 Lot 22
35 Townsend Street
- C. Newton High School
Block 6.05, Lot 12
54-56 Ryerson Avenue
- D. Merriam Avenue Elementary School
Block 17.03, Lot 12
81 Merriam Avenue

Mr. Torre asked: What exactly are we approving?

Mr. Soloway stated: It is a Capital Improvement Plan. You are making a finding that it is not inconsistent with the Master Plan. Based on what was heard at the hearing, you are making a recommendation that the applicant work with the Town Engineer on the type and color of the fencing that will be installed at these installations.

Mrs. Le Frois made a motion to approve the resolution subject to updating Block and Lot for two properties. Mrs. Diglio seconded the motion.

AYE: Mr. Flynn, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mrs. Le Frois, Mrs. Diglio, Mr. Russo, Mr. Caffrey,
Chairman Le Frois

OLD BUSINESS

None

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NEW BUSINESS

Robert Occhifinto #PSPV-05-2012
Block 20.02, Lot 1
42 Hicks Avenue

Carried to July 18, 2012 meeting at 7 PM with no further notice
Letter of Deficient Notice was submitted June 19, 2012

Redevelopment Study

Present: Jennifer Credidio, Esq. of McManimon & Scotland LLC

Mr. Soloway stated: This is a hearing that is being conducted pursuant to what is called the Redevelopment and Housing Law. The Town Council has adopted a resolution which authorizes this Board to undertake a preliminary investigation to determine whether two properties, Block 10.01, Lots 5 and 6 meet the statutory criteria that are required in order to be designated as a redevelopment area. In order to do this, the statute requires there be a public hearing before the Board. Ms. Caldwell has prepared an Area In Need of Redevelopment Study which she will discuss in detail. It lays out the statute and the criteria and discusses how these properties relate to those criteria. At the conclusion of the hearing, the Board is required to make a recommendation to the Town Council as to whether one or both areas in the study should be determined to be a redevelopment area or an area in need of redevelopment. If the Board does make that recommendation, it goes back to the Town Council and the Town Council will make the actual determination that one lot or both lots are in an area in need of redevelopment. If they do this, the Town Council would then consider the adoption of a Redevelopment Plan which governs the redevelopment of the area. This plan would supersede the Zoning Ordinance. At that time, it would come back to this Board for review for Master Plan consistency and to make recommendations they deem appropriate.

The whole process continues and the Board gets involved with the redevelopment application. For tonight's purpose all you are doing is listening to the evidence presented by Ms. Caldwell and any other evidence that may come up tonight and making a determination as to whether both lots or maybe one lot meet the criteria to be designated as an area in need of redevelopment. If you reach that conclusion, you then make that recommendation to Town Council and they make that finding because it has to come from them.

Mr. Soloway continued: This is a noticed hearing. I do have a copy of the published notice which appears to be in order. There are three properties that are required to be noticed by mail. Everything is in order.

SWORN: Jessica Caldwell, Board Planner, J. Caldwell & Associates, LLC.

Ms. Caldwell stated: The Town Council of the Town of Newton authorized J. Caldwell & Associates, LLC to conduct an Area in Need Redevelopment Study for Block 10.01, Lots 5 & 6, formerly known as Block 8.01, Lots 49.01 & 49.02. The purpose of the study is to determine if the two lots referenced should be designated as an Area in Need of Redevelopment pursuant to the Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1. The study area includes two sites covering 10.33 acres located on South Park Drive and US Route 206 (a.k.a. Water Street). The sites are improved with a ShopRite grocery store on Block 10.01, Lot 5 and the former Newton Armory on Block 10.01, Lot 6. The Newton Armory was constructed sometime after 1956

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when the State of New Jersey assumed ownership of the land from the Town of Newton and functioned as a National Guard Training Center until it was abandoned by the State of New Jersey in 2008. The ShopRite was constructed in 1971 and has frontage along US Route 206 and South Park Drive. Both sites, which comprise the study area, are along the Town's northeastern border with the Township of Hampton.

Ms. Caldwell stated: Study Methodology – In order to conduct the study, our firm conducted research and investigation into the history of the use of the area and conducted field investigations in April of this year. Field investigations included photo documentation to determine if the area meets the statutory criteria to determine an area in need of redevelopment. They also reviewed the Master Plan, former zoning and current zoning as it relates to the area. They reviewed property tax records and police reports for both sites. They also reviewed two environmental reports on the Armory site. One was a Preliminary Site Investigation dated September 2009 and the other was a Site Investigation dated October 2011. Both reports were prepared by Excel Environmental Resources, Inc., on behalf of the Town of Newton.

Ms. Caldwell concluded that the study further recommends that the Town Council and Planning Board authorize the preparation of a Redevelopment Plan for the area in order to facilitate a unified development on the site and address the unique circumstances and constraints of the area, while eradicating blight.

Mr. Tharp asked: Why are we bringing this up now and why are we not considering G & H? We have a thriving, prospering business in the ShopRite site currently. It is preexisting non-conforming. Wouldn't that existing building and site come under those conditions?

Ms. Caldwell stated: It is preexisting nonconforming but in terms of the study area we delineated it because of the ownership of the property of the Armory. We have had several discussions about possible development with the G & H site but we are not as concerned about the G & H site at this moment. The Shoprite site has been an issue over the years because of all the expansions and the Armory creates a viable redevelopment site.

Mr. Tharp asked: We don't own the buildings on the Armory site and from what I read in your report and what you have repeated here tonight is that we have contaminated soil. So the Town owns contaminated property but they don't own the buildings. If we are negotiating buying the buildings, I surely hope we are not going to spend any money buying the property and then having to remedy the soil condition. It seems to me that would have to take place before you can do any development on that piece of property.

Mr. Russo stated: No. That is not true; whoever the Town sells the property to would be responsible for the cleanup. The Town is making no commitment to clean up the property. The purchaser would get copies of any environmental studies that have been conducted by the Town.

Mr. Tharp asked: Who would do that? It has already been up for auction twice. What are the chances that someone will buy that piece of property?

Mr. Russo stated: When the auctions occurred earlier there was no institutional knowledge about the extent of the environmental cleanup. Now that we have information, it is up to a developer whether or whether not they would like to pursue redevelopment in that area. I don't

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share your negativism about the possibility of redevelopment knowing that there is an interested party and that there is a possibility of a much larger project on the two parcels of land.

Ms. Caldwell stated: The idea of creating a redevelopment area is that it provides more options for the developers and hopefully brings in more people who would be interested in purchasing the property.

Mr. Torre asked: You mentioned that the buildings are obsolete and unusable. Why are we purchasing from the State? Why wouldn't the Town condemn them?

Mr. Russo stated: We do not own the buildings. We own the land.

Mr. Soloway stated: The Town does not have the legal right to condemn property owned by a superior governmental entity which is the State.

Mr. Torre asked: Was this a prearranged agreement that we were going to buy it back from the State?

Mr. Soloway stated: I do not know. Both of these questions are very good. I just want to remind the Board that what is before the Board is to make a recommendation as to whether the properties meet the criteria to be an area in need of redevelopment.

Mr. Torre stated: I would have a major problem voting on some type of a purchase of a property or even supporting a property that is ultimately going to be knocked down. I think that would be very embarrassing for the Town.

Mr. Russo stated: The Town has already agreed to purchase the building and it is not for discussion tonight unless Council disagrees. The purpose tonight is to decide if it is a redevelopment area not whether the Town is correct in purchasing the building. The Council has already decided that is the course of action.

Mr. Torre stated: Let's clarify that there is a prearranged agreement on this property?

Mr. Russo stated: The Town is in negotiations with the State of New Jersey to purchase the buildings and we are going through the paper work right now. We have agreed to the terms in terms of the financial consideration and now we are working on the appropriate contract.

Mr. Tharp asked: What do you need from us?

Mr. Soloway stated: What is before the Board tonight is the Council is clearly exploring whether to try to develop these properties through the mechanisms that are provided under the Redevelopment Law. In order to invoke that law and go through that process and all the steps that I tried to describe to you, it initially has to be referred to the Planning Board. It is a determination as to whether to recommend to the Council that it make a formal finding that these properties meet the statutory criteria that Ms. Caldwell described so they can qualify as an area in need of redevelopment. It would then leave this Board and it goes back to the Council.

Mr. Tharp asked: So if we make a recommendation to go forward, what happens to ShopRite. Are they going to be forced to do something?

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Mr. Soloway stated: If you make the finding suggested by Ms. Caldwell's study it doesn't automatically mean that anything happens to ShopRite.

Mr. Tharp stated: The logic escapes me. We are going to purchase buildings on property that has contaminated soil that we own; we are not going to be responsible for that and the State is not going to be responsible for that. What I think I am hearing is don't worry about what happens to ShopRite or a preexisting thriving business in the Town because that is out of my hands. Is that correct?

Ms. Caldwell stated: This presents an opportunity to create a redevelopment area that will hopefully be beneficial for the Armory Site and the ShopRite site together. If ShopRite says they don't want anything to do with it, they can stay as they are indefinitely just like other properties in Town. If you think about Thorlabs and what happened there is a good example.

Chairman Le Frois stated: Designating the area in need of redevelopment simply allows the use of that State Law to do certain things and get special loans.

Mr. Soloway stated: This is a very early step in what could be a very comprehensive and complicated process.

Discussion ensued on why the Planning Board needs to be involved in this process.

Mr. Soloway stated: The statute outlines the criteria in order to qualify. This Board needs to make a determination as to whether you think these properties or one of these properties meets those criteria. If you do find they meet them then you recommend to the Council that they formally make that finding. If it proceeds to a project, it will come back to this Board two more times. One more time to review the Redevelopment Plan which is like an ordinance and you will have your input there just like you had with the new zoning ordinance. If the whole thing succeeds you will then hear the site plan application. Your concerns about citizens and tax payers are valid concerns but they are Town Council issues and not Planning Board issues.

Discussion ensued on JCP&L's easement.

Ms. Caldwell presented **Exhibit A-1**, aerial photo of the site with the boundary and wetlands.

Mr. Tharp asked: What if you broke off the ShopRite property? Wouldn't the ShopRite property fall under the new zoning ordinances and whatever improvements they need to make we could make them?

Mr. Soloway stated: You can try to do that if they come in on the development application. They are a preexisting non-conforming use which includes everything that is on there. The fact that the parking lot standards, the design standards, and maybe the setbacks don't conform to the new ordinance, you have no ability to make them change that; they are protected.

Chairman Le Frois stated: It still has to have a development application. Even though you identify it as an area in need of redevelopment that doesn't mean you can go out and say you need this, this and this.

Ms. Caldwell stated: There is nowhere for ShopRite to redevelop on the site.

Mr. Torre stated: If we don't move quickly enough, they could move somewhere else.

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Mr. Flaherty asked: If we designate both of the lots, is it possible for a developer to come in with a plan for just one of the lots?

Mr. Soloway stated: The plan if and when adopted will define what can and can't be done.

Mr. Flynn asked: If the potential buyer is ShopRite could you do a lot merger?

Mr. Soloway stated: You can't compel a lot merger under your question. The Redevelopment Plan will deal with the two lots as a unified development plan.

Chairman Le Frois opened this portion of the meeting up to the public. With no questions from the public, this portion of the meeting was closed.

Mr. Soloway read the draft of the resolution, entitled Resolution of the Planning Board of the Town Of Newton, County of Sussex, New Jersey recommending Block 10.01, Lots 5 & 6 be designated as an area in need of redevelopment.

Mr. Russo made a motion to make a recommendation to adopt the resolution. Mrs. Le Frois seconded the motion.

AYE: Mr. Flynn, Mr. Flaherty, Mr. Marion, Mr. Tharp, Mrs. Le Frois, Ms. Diglio, Mr. Russo, Mr. Caffrey, Chairman Le Frois

CORRESPONDENCE

Chairman Le Frois read an email from Mr. Caffrey dated May 16, 2012 stating his resignation effective June 27, 2012.

Mrs. Le Frois stated: The Town Council presented Mr. Caffrey with a formal proclamation at last week's meeting.

Mr. Daniel Flynn will be moving on to the Town Council and they will name a replacement once Mr. Flynn takes office. Mrs. Le Frois will be off the Board as a result of her term coming to an end at the end of July with a replacement to be named.

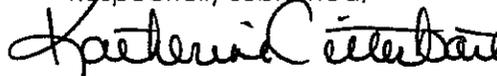
PUBLIC PORTION

None

ADJOURNMENT

Mrs. Le Frois made a motion to adjourn the meeting. Mr. Russo seconded the motion. The meeting was adjourned with a unanimous "aye" vote. The meeting adjourned at 8:54 PM. The next regularly scheduled meeting will be held on July 18, 2012, at 7:00 PM in the Council Chambers of the Municipal Building.

Respectfully submitted,



Katherine Citterbart
Planning Board Secretary

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Exhibit Page

Exhibit A-1, aerial photo of the site with the boundary and wetlands.